

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Gary Charles Rigdon,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:08cv716
vs.	:	
	:	Chief Judge Susan J. Dlott
Warden, Chillicothe Correctional Institution,	:	
	:	
Respondent(s).	:	

ORDER

The Court has reviewed the Report and Recommendation of United States Magistrate Judge J. Gregory Wehrman filed on July 7, 2010 (Doc. 35), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired September 22, 2010, hereby ADOPTS said Report and Recommendation.

Accordingly, petitioner's petition for writ of habeas corpus pursuant to §28 U.S.C. § 2254 (Doc. 3) is **DENIED** with prejudice.

A certificate of appealability will not issue with respect to the claim alleged in Ground Two of the petition, which this Court has concluded is waived and thus procedurally barred from review, because under the first prong of the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), "jurists of reason" will not find it debatable whether this Court is correct in its procedural ruling. A certificate of appealability will not issue with respect to petitioner's remaining claims alleged in Grounds One and Three through Eight of the petition, which have been addressed on the merits herein, in the absence of a substantial showing that petitioner has stated a "viable claim of the denial of a constitutional right" or that issues

presented are “adequate to deserve encouragement to proceed further.” *See Slack*, 529 U.S. at 475 (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)); *see also* 28 U.S.C. § 2253 (c); Fed. R. App. P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order adopting the Report and Recommendation will not be taken in “good faith,” and therefore would **DENY** petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sprkman*, 117 F.3d 949, 952 (6<sup>th</sup> Cir. 1997).

IT IS SO ORDERED.

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s/Susan J. Dlott  
Chief Judge Susan J. Dlott  
United States District Court